



Atty. Dkt. No. 085874-0136

2643
#26
smc
8/4/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Graham BANK et al.

Title: LOUDSPEAKERS

Appl. No.: 09/384,419

Filing Date: 08/27/1999

CPA Filed: 02/05/2002

Examiner: Suhan NI

Art Unit: 2643

RECEIVED

JUL 31 2003

Technology Center 2600

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop NON-FEE AMENDMENT
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

This paper is responsive to the Office Action dated July 1, 2003, which consists of a restriction requirement as between two allegedly distinct inventions. Applicant respectfully *traverses* the restriction requirement *in the strongest terms*, for the following reasons.

Prior to the restriction requirement, the Examiner searched the prior art in respect to *all* of the claims; *all* of the claims were examined on their merits; and virtually all of the claims were rejected over prior art. See the preceding Office Actions of April 10, 2002 and September 24, 2002. Because the work on *all* of the claims has already been done, there is no administrative justification for separating the claims into two groups now.

For the same reasons, it would be grossly unfair to require Applicant to file another application on the nonelected invention; to incur the filing and prosecution costs associated with the second application; and to incur the maintenance fees associated with a second patent.

The Rules of Practice do not mandate restriction just because separate and distinct inventions are allegedly claimed in the same application. In fact, the Manual of Patent Examining Procedure (MPEP) states, "If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions." MPEP §803 (emphasis added). In this case, the search and examination of all claims *has already been accomplished*, so there is no burden at all for the Examiner to continue examining *all* of the claims on the merits.

To be completely responsive to the latest Office Action, Applicant hereby elects the invention of Group I, namely, claims 1, 5-6, 22-27 and 33, drawn to the structures/structural elements of a vibration exciting system for a panel speaker. Applicant, of course, reserves the right to file a divisional application with claims to the non-elected invention. However, Applicant respectfully requests that the Examiner ***reconsider and withdraw*** the restriction requirement for the reasons stated above.

Receipt of a further Office Action on the merits of all claims is awaited.

Respectfully submitted,

Date JUL 3 0 2003

By Alan I. Cantor

FOLEY & LARDNER
Customer Number: 22428

Alan I. Cantor
Attorney for Applicant
Registration No. 28,163



22428

PATENT TRADEMARK OFFICE

Telephone: (202) 672-5570

Facsimile: (202) 672-5399

SHOULD ADDITIONAL FEES BE NECESSARY IN CONNECTION WITH THE FILING OF THIS PAPER, OR IF A PETITION FOR EXTENSION OF TIME IS REQUIRED FOR TIMELY ACCEPTANCE OF SAME, THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE DEPOSIT ACCOUNT NO. 19-0741 FOR ANY SUCH FEES; AND APPLICANT(S) HEREBY PETITION FOR ANY NEEDED EXTENSION OF TIME.